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LEGAL DEPT.

IN THE MATTER OF	§	TEXAS BOARD OF
THE LICENSE OF	§	VETERINARY
CLAY MCCREARY, D.V.M.	§	MEDICAL EXAMINERS

AGREED ORDER

On this the 21st day of October, 2014, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Clay McCreary, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.29, an informal conference was held on May 5, 2014. Respondent did not attend the informal conference and was not represented by counsel. Pursuant to Section 801.409, Texas Occupations Code, and Board Rule 575.35, a Temporary Suspension conference was held on June 16, 2014. Respondent attended and was represented by Robert Simpson, Leichter Law Firm. The Board was represented at the conference by the Board's Enforcement Committee.

Respondent, without admitting the truth of the findings and conclusions set out in this Agreed Order, wishes to waive a formal adjudicative hearing and thereby informally dispose of the issues without a formal adjudication. Respondent agrees to comply with the terms and conditions set forth in this Order. In waiving an adjudicative hearing, Respondent acknowledges his understanding of the alleged violations and the adequacy and sufficiency of the notice provided to him.

Upon the recommendation of the Enforcement Committee and with Respondent's consent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order as set forth below.

Findings of Fact

1. Respondent, Clay McCreary, D.V.M. of Sugarland, Texas, holds Texas veterinary license 8683.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received notice, which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under Tex. Occ. Code Ann. Title 4 (Act). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice and hearing under the Act; Tex. Gov't Code Ann. §§ 2001.051-.054; and the Rules of the Texas Board of Veterinary Medical Examiners (Board Rules) (22 Tex. Admin. Code, Chapter 575).

3. Respondent has been employed as a veterinarian at the Bellfort Animal Hospital, located at 6633 Bellfort Street, Houston, Texas 77807 ("Clinic"), for several years. Respondent is the only living veterinarian associated, in the Board's records, with the Clinic. However, Respondent stated to the Board that he does not own the Clinic, but rather the unlicensed non-veterinarian Kathleen Shaw owns the Clinic.
4. On July 18, 2013, the Board obtained information from the Harris County District Clerk stating that Respondent was indicted on January 24, 2013, for the third degree felony possession of a controlled substance.
5. A review of Respondent's licensee file did not indicate that he had previously reported the indictment.
6. On November 5, 2013, the Texas Student Loan Corporation notified the Board that Respondent was in arrears on his student loans.
7. Respondent is the only living veterinarian associated, in the Board's records, with the Bellfort Animal Hospital in Houston ("Clinic").
8. On May 22, 2014, Board Investigator Emilio Morales ("Mr. Morales") conducted an onsite inspection of the Clinic. Respondent was not at the clinic working on that day, but Dr. Marvin Hare ("Dr. Hare") was present and working. Dr. Hare does not own the Clinic.
9. The controlled substance log showed no balance on hand for Ketamine, Beuthanasia, Butorphanol (also called "Dolorex"), and the elixir form of Phenobarbital despite those drugs being physically on the premises. In addition to not having a balance on hand, there was not even a controlled substance log for Dolorex or the elixir form of Phenobarbital.
10. Mr. Morales also found that the Clinic's controlled substances were stored in a non-substantially constructed cabinet that was locked via a hasp and pad lock that potentially did not prevent unauthorized access to the controlled substances and potentially did not prevent diversion of controlled substances. The hasp and pad lock system was externally installed as well as easily defeated by the use of a pry bar or screwdriver to pry the cabinet open.
11. Further, Respondent's controlled substance registration from the Department of Public Safety ("DPS") was expired as of July 1, 2013. The registration was later terminated due to non-renewal. Respondent has not obtained a replacement registration. Respondent admits to using controlled substances after his registration had expired.
12. On May 30, 2014, Mr. Morales and Director of Enforcement Ms. Karen Phillips, ("Board Investigators") conducted an onsite inspection of Respondent's practice. Respondent was not on the premises. In fact when Board Investigators arrived, no veterinarian was on the premises, but despite this fact the Clinic was open for business.

13. Beverly Chaney ("Ms. Chaney"), veterinary technician at the Clinic, took Ms. Phillips to the unlocked controlled substance cabinet and opened it for Ms. Phillips. Ms. Chaney then verbally stated that it was probably unlocked by Mrs. Kathleen Shaw, the widow of the deceased former owner of the Clinic, the night before. Ms. Chaney then went on to write and sign a notarized copy of a written statement to the Board. In that statement, Ms. Chaney stated that the controlled substances drug cabinet is sometimes unsecured and open. She also stated that the Clinic sometimes sees patients without a veterinarian present.

14. Maria Armenta ("Ms. Armenta"), employee of the Clinic, stated that when no veterinarian was on the Clinic premises that Mrs. Shaw would instruct Clinic staff to treat client's animals by administering shots and even on at least one occasion sedating an animal.

15. Charlotte Kay Chapman ("Ms. Chapman"), employee of the Clinic, stated that she has previously had trouble reaching Respondent, even by telephone, and that she has seen employees of the Clinic administering vaccines when a veterinarian was not present at the Clinic.

16. Mr. Morales also discovered that Ms. Shaw consistently ordered controlled substances with Respondent's DPS registration number. She also signed for the drugs when they were shipped to the clinic.

Conclusions of Law

1. Respondent is required to comply with the provisions of the Veterinary Licensing Act, Chapter 801, Texas Occupations Code, and with the Board's Rules.

2. Based on the above Findings of Fact, Respondent has violated Board Rule 573.70 REPORTING OF CRIMINAL ACTIVITY, by failing to inform the Board within 30 days from January 24, 2013 that he was charged with possession of a controlled substance.

3. Based on the above Findings of Fact, Respondent has violated Board Rule 573.78 DEFAULT ON STUDENT LOAN/CHILD SUPPORT PAYMENTS, by defaulting on his student loans.

4. Based on the above Findings of Fact, Respondent has violated Rule 573.10, SUPERVISION OF NON-VETERINARIANS, by allowing employees of the Clinic to routinely perform diagnosis and prognosis of animal diseases and/or conditions, prescribe drugs or appliances, or initiate treatment without prior instruction by a veterinarian.

5. Based on the above Findings of Fact, Respondent has violated Rule 573.50, CONTROLLED SUBSTANCES RECORDKEEPING FOR DRUGS ON HAND, by failing to maintain at his place of business records of all scheduled drugs listed in the Texas Controlled

Substances Act in his possession and failing to include within those records the balance on hand for those drugs.

6. Based on the above Findings of Fact, Respondent has violated Rule 573.61, MINIMUM SECURITY FOR CONTROLLED SUBSTANCES, by failing to establish adequate security for controlled substances listed in Schedules I, II, III, IV, and V by storing them in a securely locked, substantially constructed cabinet or security cabinet.

7. Based on the above Findings of Fact, Respondent has violated Rule 573.43 CONTROLLED SUBSTANCES REGISTRATION, by prescribing, dispensing, delivering or ordering delivered, any controlled substance, when he was not currently registered with the DPS.

8. Based on the above Findings of Fact, Respondent has violated Section 801.352 of the Veterinary Licensing Act, which prohibits a veterinarian from being exploited by a person who is not a veterinarian and intervenes in the veterinarian's practice of veterinary medicine or between the veterinarian and the veterinarian's client.

9. Based on the above Findings of Fact, Respondent has violated Section 801.506 of the Veterinary Licensing Act, Texas Occupations Code, which prohibits a corporation, organization, partnership, association or other legal entity not owned exclusively by persons licensed to practice veterinary medicine from engaging in the practice of veterinary medicine, and forbids veterinarians from forming or continuing partnerships with persons who are not licensed to practice veterinary medicine if a part of the partnership employment consists of the practice of veterinary medicine.

10. Based on the above Conclusions of Law, Respondent has violated Section 801.402 (6) of the Veterinary Licensing Act, Texas Occupations Code, and is subject to disciplinary action by the Board:

801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license or to disciplinary action under Section 801.401 if the person:

(6) engages in practices or conduct that violates the board's rules of professional conduct.

11. Based on the above Conclusions of Law, Respondent is subject to disciplinary action under Section 801.401 of the Veterinary Licensing Act, Texas Occupations Code:

801.401. DISCIPLINARY POWERS OF BOARD. (a) If an applicant or license holder is subject to denial of a license or to disciplinary action under Section 801.402, the Board may: (a)

- (1) refuse to examine an applicant or to issue or renew a license;
- (2) revoke or suspend a license;
- (3) place on probation a license holder or person whose license has been suspended;
- (4) reprimand a license holder; or
- (5) impose an administrative penalty.

4. Based on the above Conclusions of Law, Respondent may be disciplined in the manner set out in Section 801.451, IMPOSITION OF ADMINISTRATIVE PENALTY, of the Veterinary Licensing Act, which authorizes an administrative penalty for violations of the Act and Board rules.

NOW, THEREFORE, THE BOARD AND RESPONDENT AGREE AS FOLLOWS:

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent receive a FORMAL REPRIMAND.

The Board further ORDERS that the license of Respondent is SUSPENDED for TWO YEARS, with all BUT TWO (2) MONTHS of the suspension STAYED and Respondent placed on PROBATION. The two (2) months of suspension that are not stayed may include the time of June 2, 2014, through August 1, 2014.

The Board further ORDERS that Respondent submit to an evaluation with the Board's Peer Assistance Program and follow all of the recommendations of the Board's Peer Assistance Program.

The Board ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of two thousand dollars (\$2,000.00). If Respondent fails to pay the administrative penalty within 45 days of the date of this Order, Respondent's license may be suspended until the penalty is paid.

The Board further ORDERS that Respondent shall take and pass the Texas veterinary jurisprudence examination within 90 days from the date of this Agreed Order.

Also, the Board ORDERS Respondent **NOT TO UTILIZE** controlled substances until Respondent receives and maintains a current Texas Department of Public Safety controlled substances registration.

The Board further ORDERS that:

The Board further ORDERS that:

1. Respondent shall abide by the Rules of Professional Conduct, the Texas Veterinary Licensing Act, and the laws of the State of Texas and the United States.
2. Respondent shall cooperate with the Board's attorneys, investigators, compliance officers and other employees and agents investigating Respondent's compliance with this Agreed Order.
3. Failure by Respondent to comply with the terms of this Agreed Order or with any other provisions of the Licensing Act or the Board Rules, may result in further disciplinary action.

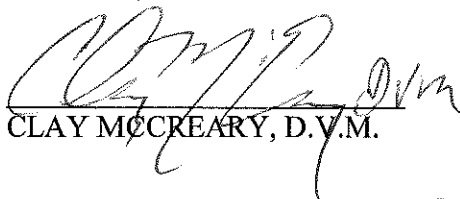
Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees that he will satisfactorily comply with the mandates of the Agreed Order in a timely manner or be subject to appropriate disciplinary action by the Board.

Respondent, by signing this Agreed Order, waives his right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that he had the right to be represented by legal counsel in this matter.

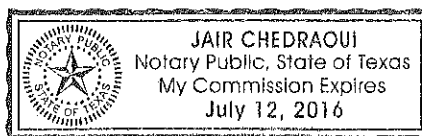
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

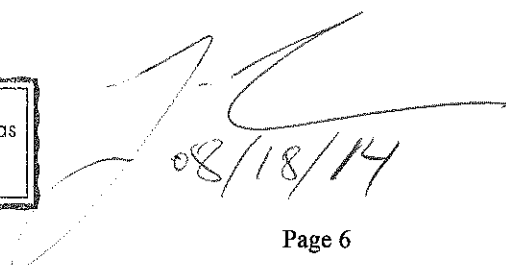
The effective date of this Agreed Order shall be the date it is adopted by the Board.

I, CLAY MCCREARY, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THAT THIS ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.


CLAY MCCREARY, D.V.M.

08/18/14
DATE




08/18/14

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, on this day, personally appeared Clay McCreary, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this _____ day of _____, 20____.

Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL
EXAMINERS on this the 21st October, 2014.



Bud E. Alldredge, Jr., D.V.M., President